

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

MARY HELEN COAL CORPORATION, a  
Virginia Corporation,  
Plaintiff-Appellant,

v.

MARTY D. HUDSON; MICHAEL H.  
HOLLAND, Trustees of the United  
Mine Workers of America  
Combined Benefit Fund and  
Trustees of the 1992 United Mine  
Workers of America Benefit Plan;

No. 97-2331

THOMAS O. S. RAND; ELLIOTT A.  
SEGAL; CARLTON R. SICKLES; GAIL R.  
WILENSKY; WILLIAM P. HOBGOOD,  
Trustees of the United Mine  
Workers of America Combined  
Benefit Fund; THOMAS F. CONNORS;  
ROBERT WALLACE, Trustees of the  
1992 United Mine Workers of  
America Benefit Plan,  
Defendants-Appellees.

Appeal from the United States District Court  
for the Eastern District of Virginia, at Richmond.  
Richard L. Williams, Senior District Judge.  
(CA-97-71-3)

Argued: January 27, 1998

Decided: September 24, 1998

Before MURNAGHAN, NIEMEYER, and MOTZ, Circuit Judges.

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Reversed by unpublished per curiam opinion.

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## COUNSEL

**ARGUED:** Patrick Michael McSweeney, MCSWEENEY, BURTCH & CRUMP, P.C., Richmond, Virginia, for Appellant. Peter Buscemi, MORGAN, LEWIS & BOCKIUS, Washington, D.C., for Appellees.

**ON BRIEF:** William B. Ellis, John L. Marshall, Jr., MCSWEENEY, BURTCH & CRUMP, P.C., Richmond, Virginia; Robert H. Bork, Washington, D.C., for Appellant. John Mills Barr, MORGAN, LEWIS & BOCKIUS, Washington, D.C.; David W. Allen, Office of the General Counsel, UMWA HEALTH & RETIREMENT FUNDS, Washington, D.C.; John R. Mooney, MOONEY, GREEN, BAKER, GIBSON & SAINDON, P.C., Washington, D.C.; Samuel M. Brock, III, MAYS & VALENTINE, Richmond, Virginia, for Appellees.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

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## OPINION

### PER CURIAM:

Mary Helen Coal Corporation ("Mary Helen") appeals a final order of the district court granting summary judgment to the appellees on Mary Helen's claim that the Coal Industry Retiree Benefit Act of 1992, 26 U.S.C. §§ 9701-9722, as applied to Mary Helen, violates the Due Process and Takings Clauses of the Fifth Amendment. Following briefing and oral argument, we ordered that the case be held in abeyance pending argument and decision by the Supreme Court in Eastern Enters. v. Apfel, 118 S. Ct. 2131 (1998). On June 25, 1998, the Supreme Court issued a decision in Eastern in which five Justices agreed that the Coal Act was unconstitutional as applied to Eastern Enterprises. Because the case at bar is materially indistinguishable from Eastern, we grant Mary Helen's motion for summary reversal

pursuant to Fourth Circuit Rule 27(g), and remand the case to the district court for further proceedings. Also outstanding are Mary Helen's motion to strike portions of the appellees' brief, which is hereby granted, and appellees' motion to supplement the record on appeal, which is denied.

REVERSED